

20184ut art c

1 UNITED STATES DISTRICT COURT
2 **SOUTHERN DISTRICT OF NEW YORK**
2-----x

3 **UNITED STATES OF AMERICA**

4 v.

16 Cr. 832 (KMK)

5 **CONFERENCE**

6 NICHOLAS TARTAGLIONE,

7 **Defendant.**

8-----x
9
10 United States Courthouse
11 White Plains, N.Y.
12 April 30, 2018
13 3:00 p.m.
14
15 Before: THE HONORABLE KENNETH M. KARAS, District Judge
16
17 APPEARANCES
18
19 BARKET, EPSTEIN & KEARON, LLP
20 Attorneys for Defendant
21 BRUCE BARKET
22 AIDA LEISENRING
23
24 MARK DeMARCO (via telephone)
25 Attorney for Defendant
Learned Counsel
25
26
27 ANTHONY RICCO
28 Learned Counsel
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
2510
2511
2512
2513
2514
2515
2516
2517
2518
2519
2520
2521
2522
2523
2524
2525
2526
2527
2528
2529
2530
2531
2532
2533
2534
2535
2536
2537
2538
2539
2540
2541
2542
2543
2544
2545
2546
2547
2548
2549
2550
2551
2552
2553
2554
2555
2556
2557
2558
2559
2560
2561
2562
2563
2564
2565
2566
2567
2568
2569
2570
2571
2572
2573
2574
2575
2576
2577
2578
2579
2580
2581
2582
2583
2584
2585
2586
2587
2588
2589
2590
2591
2592
2593
2594
2595
2596
2597
2598
2599
25100
25101
25102
25103
25104
25105
25106
25107
25108
25109
25110
25111
25112
25113
25114
25115
25116
25117
25118
25119
25120
25121
25122
25123
25124
25125
25126
25127
25128
25129
25130
25131
25132
25133
25134
25135
25136
25137
25138
25139
25140
25141
25142
25143
25144
25145
25146
25147
25148
25149
25150
25151
25152
25153
25154
25155
25156
25157
25158
25159
25160
25161
25162
25163
25164
25165
25166
25167
25168
25169
25170
25171
25172
25173
25174
25175
25176
25177
25178
25179
25180
25181
25182
25183
25184
25185
25186
25187
25188
25189
25190
25191
25192
25193
25194
25195
25196
25197
25198
25199
25200
25201
25202
25203
25204
25205
25206
25207
25208
25209
25210
25211
25212
25213
25214
25215
25216
25217
25218
25219
25220
25221
25222
25223
25224
25225
25226
25227
25228
25229
25230
25231
25232
25233
25234
25235
25236
25237
25238
25239
25240
25241
25242
25243
25244
25245
25246
25247
25248
25249
25250
25251
25252
25253
25254
25255
25256
25257
25258
25259
25260
25261
25262
25263
25264
25265
25266
25267
25268
25269
25270
25271
25272
25273
25274
25275
25276
25277
25278
25279
25280
25281
25282
25283
25284
25285
25286
25287
25288
25289
25290
25291
25292
25293
25294
25295
25296
25297
25298
25299
25300
25301
25302
25303
25304
25305
25306
25307
25308
25309
25310
25311
25312
25313
25314
25315
25316
25317
25318
25319
25320
25321
25322
25323
25324
25325
25326
25327
25328
25329
25330
25331
25332
25333
25334
25335
25336
25337
25338
25339
25340
25341
25342
25343
25344
25345
25346
25347
25348
25349
25350
25351
25352
25353
25354
25355
25356
25357
25358
25359
25360
25361
25362
25363
25364
25365
25366
25367
25368
25369
25370
25371
25372
25373
25374
25375
25376
25377
25378
25379
25380
25381
25382
25383
25384
25385
25386
25387
25388
25389
25390
25391
25392
25393
25394
25395
25396
25397
25398
25399
25400
25401
25402
25403
25404
25405
25406
25407
25408
25409
25410
25411
25412
25413
25414
25415
25416
25417
25418
25419
25420
25421
25422
25423
25424
25425
25426
25427
25428
25429
25430
25431
25432
25433
25434
25435
25436
25437
25438
25439
25440
25441
25442
25443
25444
25445
25446
25447
25448
25449
25450
25451
25452
25453
25454
25455
25456
25457
25458
25459
25460
25461
25462
25463
25464
25465
25466
25467
25468
25469
25470
25471
25472
25473
25474
25475
25476
25477
25478
25479
25480
25481
25482
25483
25484
25485
25486
25487
25488
25489
25490
25491
25492
25493
25494
25495
25496
25497
25498
25499
25500
25501
25502
25503
25504
25505
25506
25507
25508
25509
25510
25511
25512
25513
25514
25515
25516
25517
25518
25519
25520
25521
25522
25523
25524
25525
25526
25527
25528
25529
25530
25531
25532
25533
25534
25535
25536
25537
25538
25539
25540
25541
25542
25543
25544
25545
25546
25547
25548
25549
25550
25551
25552
25553
25554
25555
25556
25557
25558
25559
25560
25561
25562
25563
25564
25565
25566
25567
25568
25569
25570
25571
25572
25573
25574
25575
25576
25577
25578
25579
25580
25581
25582
25583
25584
25585
25586
25587
25588
25589
25590
25591
25592
25593
25594
25595
25596
25597
25598
25599
25600
25601
25602
25603
25604
25605
25606
25607
25608
25609
25610
25611
25612
25613
25614
25615
25616
25617
25618
25619
25620
25621
25622
25623
25624
25625
25626
25627
25628
25629
25630
25631
25632
25633
25634
25635
25636
25637
25638
25639
25640
25641
25642
25643
25644
25645
25646
25647
25648
25649
25650
25651
25652
25653
25654
25655
25656
25657
25658
25659
25660
25661
25662
25663
25664
25665
25666
25667
25668
25669
25670
25671
25672
25673
25674
25675
25676
25677
25678
25679
25680
25681
25682
25683
25684
25685
25686
25687
25688
25689
25690
25691
25692
25693
25694
25695
25696
25697
25698
25699
25700
25701
25702
25703
25704
25705
25706
25707
25708
25709
25710
25711
25712
25713
25714
25715
25716
25717
25718
25719
25720
25721
25722
25723
25724
25725
25726
25727
25728
25729
25730
25731
25732
25733
25734
25735
25736
25737
25738
25739
25740
25741
25742
25743
25744
25745
25746
25747
25748
25749
25750
25751
25752
25753
25754
25755
25756
25757
25758
25759
25760
25761
25762
25763
25764
25765
25766
25767
25768
25769
25770
25771
25772
25773
25774
25775
25776
25777
25778
25779
25780
25781
25782
25783
25784
25785
25786
25787
25788
25789
25790
25791
25792
25793
25794
25795
25796
25797
25798
25799
25800
25801
25802
25803
25804
25805
25806
25807
25808
25809
25810
25811
25812
25813
25814
25815
25816
25817
25818
25819
25820
25821
25822
25823
25824
25825
25826
25827
25828
25829
25830
25831
25832
25833
25834
25835
25836
25837
25838
25839
25840
25841
25842
25843
25844
25845
25846
25847
25848
25849
25850
25851
25852
25853
25854
25855
25856
25857
25858
25859
25860
25861
25862
25863
25864
25865
25866
25867
25868
25869
25870
25871
25872
25873
25874
25875
25876
25877
25878
25879
25880
25881
25882
25883
25884
25885
25886
25887
25888
25889
25890
25891
25892
25893
25894
25895
25896
25897
25898
25899
25900
25901
25902
25903
25904
25905
25906
25907
25908
25909
25910
25911
25912
25913
25914
25915
25916
25917
25918
25919
25920
25921
25922
25923
25924
25925
25926
25927
25928
25929
25930
25931
25932
25933
25934
25935
25936
25937
25938
25939
25940
25941
25942
25943
25944
25945
25946
25947
25948
25949
25950
25951
25952
25953
25954
25955
25956
25957
25958
25959
25960
25961
25962
25963
25964
25965
25966
25967
25968
25969
25970
25971
25972
25973
25974
25975
25976
25977
25978
25979
25980
25981
25982
25983
25984
25985
25986
25987
25988
25989
25990
25991
25992
25993
25994
25995
25996
25997
25998
25999
25100
25101
25102
25103
25104
25105
25106
25107
25108
25109
25110
25111
25112
25113
25114
25115
25116
25117
25118
25119
25120
25121
25122
25123
25124
25125
25126
25127
25128
25129
25130
25131
25132
25133
25134
25135
25136
25137
25138
25139
25140
25141
25142
25143
25144
25145
25146
25147
25148
25149
25150
25151
25152
25153
25154
25155
25156
25157
25158
25159
25160
25161
25162
25163
25164
25165
25166
25167
25168
25169
25170
25171
25172
25173
25174
25175
25176
25177
25178
25179
25180
25181
25182
25183
25184
25185
25186
25187
25188
25189
25190
25191
25192
25193
25194
25195
25196
25197
25198
25199
25200
25201
25202
25203
25204
25205
25206
25207
25208
25209
25210
25211
25212
25213
25214
25215
25216
25217
25218
25219
25220
25221
25222
25223
25224
25225
25226
25227
25228
25229
25230
25231
25232
25233
25234
25235
25236
25237
25238
25239
25240
25241
25242
25243
25244
25245
25246
25247
25248
25249
25250
25251
25252
25253
25254
25255
25256
25257
25258
25259
25260
25261
25262
25263
25264
25265
25266
25267
25268
25269
25270
25271
25272
25273
25274
25275
25276
25277
25278
25279
25280
25281
25282
25283
25284
25285
25286
25287
25288
25289
25290
25291
25292
25293
25294
25295
25296
25297
25298
25299
25300
25301
25302
25303
25304
25305
25306
25307
25308
25309
25310
25311
25312
25313
25314
25315
25316
25317
25318
25319
25320
25321
25322
25323
25324
25325
25326
25327
25328
25329
25330
25331
25332
25333
25334
25335
25336
25337
25338
25339
25340
25341
25342
25343
25344
25345
25346
25347
25348
25349
25350
25351
25352
25353
25354
25355
25356
25357
25358
25359
25360
25361
25362
25363
25364
25365
25366
25367
25368
25369
25370
25371
25372
25373
25374
25375
25376
25377
25378
25379
25380
25381
25382
25383
25384
25385
25386
25387
25388
25389
25390
25391
25392
25393
25394
25395
25396
25397
25398
25399
25400
25401
25402
25403
25404
25405
25406
25407
25408
25409
25410
25411
25412
25413
25414
25415
25416
25417
25418
25419
25420
25421
25422
25423
25424
25425
25426
25427
25428
25429
25430
25431
25432
25433
25434
25435
25436
25437
25438
25439
25440
25441
25442
25443
25444
25445
25446
25447
25448
25449
25450
25451
25452
25453
25454
25455
25456
25457
25458
25459
25460
25461
25462
25463
25464
25465
25466
25467
25468
25469
25470
25471
25472
25473
25474
25475
25476
25477
25478
25479
25480
25481
25482
25483
25484
25485
25486
25487
25488
25489
25490
25491
25492
25493
25494
25495
25496
25497
25498
25499
25500
25501
25502
25503
25504
25505
25506
25507
25508
25509

1 THE DEPUTY CLERK: The Honorable Kenneth M. Karas
2 presiding.

3 United States of America against Nicholas
4 Tartaglione, 16 Crim. 832.

5 Counsel, please state your appearances.

6 MS. COMEY: Good afternoon, your Honor. Maurene
7 Comey for the government.

8 THE COURT: Good afternoon.

9 MR. BARKET: Bruce Barket.

10 MS. LEISENRING: Aida Leisenring

11 MR. DeMARCO: Mark DeMarco.

12 MR. BARKET: All for Mr. Tartaglione.

13 THE COURT: Good afternoon to you all.

14 Please be seated, everybody.

15 All right. So I suppose the first thing we should
16 take up is what was in Mr. Barket's most recent letter dated
17 April 26.

18 I assumed you were going to respond today, so I
19 didn't ask for a written response, Ms. Comey.

20 MS. COMEY: Yes, your Honor.

21 In essence, our response would be that we believe
22 your Honor is able to address any disclosures that need to be
23 made based on the materials that your Honor has to review. Any
24 materials sought in that particular letter have already been
25 provided to the Court for review, so to the extent your Honor

1 believes that there are any disclosures necessary, we'll make
2 them as ordered.

3 THE COURT: Well, okay.

4 So the first -- obviously, as you know, the first
5 obligation is yours, yours being the government's, to turn over
6 Brady material, and I take it by what you just said that your
7 view is that you have satisfied your obligations and that
8 nothing in what you submitted for in-camera review is, in fact,
9 Brady material.

10 MS. COMEY: That's correct, your Honor.

11 THE COURT: Okay.

12 The one point that I thought was clear, whether it's
13 true or not, of course, I have no way of knowing because I
14 don't know all the evidence that you have, but what is said
15 succinctly in the bottom of page 1, the top of page 2, and in
16 particular the statement at the top of page 2, the government
17 has changed its theory entirely and now alleges that
18 Mr. Tartaglione was not only present, but actually shot one of
19 the three victims. Next paragraph: Both theories are entirely
20 contradictory and obviously impact the defense at the guilt
21 phase and penalty phase, and our argument to the government is
22 that it should not seek the death penalty. This current theory
23 pits the government's proof at odds with itself.

24 Why is that wrong?

25 MS. COMEY: Because the evidence that -- the new

1 theory, your Honor, comes from new evidence, which we have
2 provided to your Honor for review in camera. It is not
3 inconsistent with or suggests that the original evidence on
4 which we based our original theory was incorrect or involved
5 anything that was not accurate, but, rather, that the
6 government was drawing inferences from the evidence that it had
7 when it initially made its disclosures to the defense and, upon
8 receiving new evidence, recognized that the inference that the
9 government had drawn was not, in fact, correct.

10 THE COURT: But the inference, presumably, was one
11 you thought was reasonable to draw from the evidence you had at
12 the time, right?

13 MS. COMEY: Yes, your Honor, due to a lack of the
14 other evidence.

15 THE COURT: Right. But if the inference at the time
16 was X and then later evidence comes along and says not X, then
17 why doesn't the evidence that supported the inference of X then
18 become Brady?

19 MS. COMEY: Well, because the evidence that supported
20 X also supports not X.

21 THE COURT: Even if X and not X are contradictory.

22 MS. COMEY: Yes, your Honor. In this particular
23 circumstance, yes.

24 THE COURT: Okay. Some of the notes are illegible,
25 and even if they can be read, it's hard to decipher. That's

1 not true -- I don't want to say that's true of all the notes,
2 but to the extent that the government is taking the view that
3 it has met its Brady obligation even in light of the new theory
4 and is looking to -- I mean, this will sound more pernicious
5 than I mean it -- to cover itself by having the Court look at
6 it, then it gets back to -- well, first of all, there's the
7 issue about the legibility. Then there's the issue of
8 decipherability. And then there's the point that counsel had
9 made on behalf of Mr. Tartaglione that even if I could look at
10 this and say, well, it doesn't seem to be Brady, I don't have
11 the same eye that counsel does because I'm not aware of their
12 defenses. I'm not aware of any of the other evidence that's
13 been produced in discovery where they could view some piece of
14 the notes as helpful to them and, therefore, Brady.

15 So what is one to do at that point, putting aside
16 legibility?

17 MS. COMEY: Well, your Honor, with respect to the
18 legibility, we're happy to address that by, for example,
19 transcribing the notes if that would be easier for your Honor
20 and for your chambers to review it. I'm happy to do that for
21 all of them or specific ones that you're having difficulty
22 reviewing.

23 With respect to the other question, I think it comes
24 back to the same issue that we discussed at the last oral
25 argument, which is that that issue of whether or not defense

1 counsel can identify specific pieces that might be seen in a
2 different light or helpful to them and only in their eyes is an
3 issue in every single case, but that does not mean that they
4 get 3500 well in advance of any sort of trial because of that.

5 We maintain that we have provided any exculpatory
6 information and that the evidence that supported our prior
7 theory, again, is not inconsistent with our new theory.

8 THE COURT: Okay. Anything else you want to add on
9 this point?

10 MS. COMEY: No, your Honor.

11 MR. BARKET: Well, we, obviously, thought we were
12 entitled to this evidence six months ago, or five months ago,
13 so, based upon the argument that we had, it seemed pretty clear
14 to us that we would get it now. I think both the Court and the
15 government made references to, well, if our theory changes,
16 then the circumstances would change.

17 THE COURT: Well, circumstances could change.

18 MR. BARKET: Could change.

19 THE COURT: Right.

20 MR. BARKET: And not only did the theory change, it
21 really flipped on its head. It is as poignant as your Honor
22 put it. They theorize X and X being somewhat exculpatory. And
23 we talked about that last time. And I recall the discussion I
24 think either through the Court, either me and Ms. Comey or
25 maybe me and the Court had about fact and conclusion. And the

1 government was asserting this is a fact, that Nick was not
2 present, and I was saying, no, it can only be a conclusion
3 based upon evidence even though it's consistent with our
4 position. And so it turns out now that it was not only not a
5 fact, but it was an incorrect conclusion in their view. But it
6 had to be based on something. And what it was based on was
7 inferences -- as I recall the statements from the government,
8 inferences, the video surveillance which they've turned over
9 and witness statements.

10 So we think that we would be entitled to all the
11 evidence that supports X, if you will, because X is clearly
12 inconsistent with not X. They may have an argument that they
13 can fit their new theory in and have that encompass the
14 evidence that led to the conclusion that Nick was not present
15 for the shooting. That doesn't make the evidence from which a
16 reasonable inference was drawn that he wasn't present not
17 Brady.

18 THE COURT: Right. I mean, your point is that if he
19 wasn't present, that's Brady under their new theory.

20 MR. BARKET: And it's obviously Brady on guilt and
21 it's, more importantly, Brady on punishment, which goes to the
22 penalty phase.

23 THE COURT: Yes.

24 MR. BARKET: And we're at kind of a critical stage
25 because we're drafting our response -- or not our response, but

1 our submission.

2 THE COURT: So just so the record is clear, to the
3 Department of Justice.

4 MR. BARKET: Department of Justice, right.

5 THE COURT: The Capital Crimes Review Committee.

6 MR. BARKET: Correct.

7 THE COURT: Right.

8 MR. BARKET: And part of that is to kind of
9 articulate the relative positions. And we're actually -- well,
10 so that's critical, I think.

11 THE COURT: Yes. Well, and I guess that's your
12 response to Ms. Comey's point about how this may very well be a
13 conundrum that appears in every case, but your argument is but
14 this is a capital case and this is a critical phase in the
15 capital case.

16 MR. BARKET: Well, certainly, but I also -- I
17 don't -- I mean, the slippery slope if we provide the evidence
18 which supported a theory that is now inconsistent with the
19 current theory we have, therefore, we would have to give the
20 defense all the 3500 material I think really is not
21 meritorious. We can all say the defense is entitled to the
22 evidence that led to this reasonable inference, but not other
23 3500 material. It's a pretty clear line, I would think.

24 THE COURT: So your argument is it's not 3500
25 material, it's Brady.

1 MR. BARKET: Obviously, yes.

2 THE COURT: Right.

3 MR. BARKET: Clearly. It may be both.

4 THE COURT: Right, but it's the Brady that gives it a
5 different status in terms of discovery obligations.

6 MR. BARKET: Correct.

7 And really all the arguments we made last time,
8 obviously, I don't need to repeat, the case law and so forth,
9 are all -- I mean, just kind of put our motion, the letter we
10 wrote, luck and all of it, into context now, and I think it's
11 appropriate to be disclosed.

12 THE COURT: Yes.

13 I guess I'm still trying to understand, Ms. Comey,
14 how it is that the government's original theory is that
15 Mr. Tartaglione wasn't there when the victims were killed, but
16 that, now that he was there and he actually shot one of the
17 victims, I'm trying to understand how they're not intentioned.

18 MS. COMEY: Well, the theories themselves are
19 intention, your Honor, but the evidence underlying the two are
20 not. And simply put, were there a witness statement that said
21 definitively I was there when those victims were killed and
22 Mr. Tartaglione was not there, we agree that that would be
23 exculpatory. That is not the nature of the evidence that we
24 are discussing here. There is nothing that explicit that
25 removes him. To the contrary. There's evidence putting him

1 there at the scene.

2 THE COURT: But I don't think that's the issue,
3 though. To the extent that there's evidence that's consistent
4 with your new theory of the case, that's not the issue. The
5 point is that if there's evidence that's consistent with the
6 old theory, that that almost necessarily means it would be
7 inconsistent with the new theory.

8 MS. COMEY: Your Honor, the prior theory was drawn
9 from inferences that we were drawing based on a limited set of
10 evidence that we had about the events leading up to and
11 surrounding the murders in question. There was a gap in that
12 knowledge. We filled that gap with an inference that we drew.
13 There were two reasonable inferences to draw. We drew one that
14 was more favorable to Mr. Tartaglione. We then got new
15 information making clear that the less favorable inference was,
16 in fact, the correct one. That is the circumstance that
17 happened here.

18 THE COURT: Okay.

19 MR. BARKET: I mean, obviously, to me, that's the
20 definition of Brady. It's the reasonable inference from
21 evidence that -- I mean, that's it. It doesn't have to be
22 explicit. If it were explicit, that would be Brady, too, but
23 the evidence from which a -- I mean, the circumstantial
24 evidence charge at times, I mean, this is the definition of
25 Brady. It's reasonable inference that can be drawn from a set

1 of facts consistent with his defense.

2 THE COURT: Or otherwise inconsistent with the
3 prosecution's theory.

4 MR. BARKET: Correct.

5 THE COURT: Regardless of whatever your defense is.

6 MR. BARKET: Right.

7 THE COURT: Right.

8 MS. COMEY: My point is, your Honor, that none of
9 that evidence is, in fact, inconsistent with the new theory.
10 None of it. It does not change -- the new theory does not
11 change at all the series of events set forth by the witness
12 statements that were referenced in our prior submissions.

13 THE COURT: I mean, I guess what's a little
14 interesting is that what you're telling me is that the
15 government once upon a time had gaps in the evidence, drew an
16 inference to reach a certain conclusion and was prepared to
17 prosecute as a capital case knowing that there were gaps, and
18 now that the gaps have been filled by evidence that you say
19 yields a different theory, that, underlying all of that,
20 there's just no discovery obligation. That's basically what
21 we're being told here?

22 MS. COMEY: Yes, your Honor.

23 THE COURT: All right.

24 I think I'm going to need some help, then, getting
25 readable copies of these notes because, at face value, that

1 strikes me as a statement worthy of skepticism. But if I can't
2 read this stuff, then I can't do anything with it. But, also,
3 it becomes even more problematic for the Court in a vacuum,
4 with the moving target of the theory, to say something isn't
5 Brady -- and it's a lot of the government whose obligation it
6 is -- it's not my obligation, it's your obligation -- to have
7 me say definitively there's nothing in here that's Brady. But,
8 okay. I mean, I'll do my job. I'll do my best. But I'm going
9 to need readable copies.

10 MS. COMEY: Yes, your Honor.

11 THE COURT: I'll take a look and see if there's stuff
12 that's clearly readable and stuff that's clearly not readable.
13 I mean, there's the in between where there's stuff where I can
14 read the words, but I don't know what they mean. And so I may
15 need translations, if you will.

16 MS. COMEY: Yes, your Honor.

17 THE COURT: Because you know how it goes when people
18 take notes. They have their own sort of shorthand and they
19 have the benefit of Christina there giving them a line by line.

20 But that's an interesting theory. Okay.

21 So, with your permission, what I'm going to do is I'm
22 going to go back to the government and say these are the notes
23 I can't decipher, I need them transcribed, and then I'll do the
24 review. I don't know what else can be done at this point.

25 MR. BARKET: I think that's where we are.

1 THE COURT: Okay. All right.

2 Other issues to take up?

3 MR. BARKET: I think your Honor saw another
4 submission that was also under seal, so I won't refer to the
5 substance of it, or at least not the details. But there's a
6 series of questions that we asked in the form of a letter to
7 the government and the government responded. Did your Honor
8 get an opportunity to see that? I thought the government had.

9 THE COURT: I'm sure I did. Let me see here.

10 MR. BARKET: Our letter is dated April 12th. The
11 government's response is dated April 23rd. And I think they
12 were submitted to your Honor under seal on the 24th or 25th.

13 THE COURT: Yes. I'm sorry. I was looking at the
14 wrong documents.

15 MR. BARKET: So we obviously didn't -- we didn't file
16 any motions in that regard. And the only one that comes to
17 mind now would be a motion for some specifics in the form of a
18 bill of particulars.

19 THE COURT: Yes.

20 MR. BARKET: And some of the questions, though, I
21 think are very poignant for mitigation, and they were answered
22 with less specificity than I think that we would otherwise be
23 entitled to. So that's probably an issue that's going to come
24 up again quickly.

25 THE COURT: So you think you will be filing a bill of

1 particulars motion.

2 MR. BARKET: Yes. I hesitate to call it that
3 because --

4 THE COURT: Yes. The law on that --

5 MR. BARKET: Is not great.

6 THE COURT: Not great.

7 MR. BARKET: For us.

8 THE COURT: Correct, not great for you, especially
9 some of these questions are the who, what, when and where that
10 the bill of particulars sort of case law frowns upon.

11 MR. BARKET: Right. Some of them are critical for
12 understanding Mr. Tartaglione's alleged role compared to other
13 people.

14 THE COURT: Understood. So I guess what I'll say is
15 if you feel you have a viable motion, you'll file it. You all
16 will agree to a briefing schedule. I hate to sound like Sammy
17 Sceptic, but the law is tough for you in this regard,
18 especially as it relates to some of these questions. But you
19 may find some really good case, and I'll read it, or cases.

20 MR. BARKET: We will.

21 THE COURT: Okay.

22 MR. BARKET: We'll see what we can do in that regard.

23 THE COURT: Okay.

24 Other issues?

25 How are we doing on the prison situation?

1 MR. BARKET: Amazing the persuasive power of the
2 Federal Courts. Much better.

3 THE COURT: So better?

4 MR. BARKET: Better.

5 THE COURT: I realize nothing's perfect. I get that.
6 But at least it's better.

7 MR. BARKET: There's still a few issues on kind of
8 the periphery, but he's no longer in SHU. He started to
9 receive, as I just found out, some of the material that's been
10 ordered for him. Not all of it. Still a lot of it's missing.
11 But we're getting there.

12 THE COURT: Okay. All right. And if you need
13 more --

14 MR. BARKET: We will.

15 THE COURT: -- push, first call will be to Ms. Comey,
16 who's been extremely helpful. Second is to me if Ms. Comey
17 runs into resistance.

18 And the same if you need help from me, Ms. Comey.
19 You'll let me know.

20 All right. Other issues to take up?

21 You want a conference date how far out?

22 MR. BARKET: I think we both have trials in May.
23 Mine starts a little sooner, but wraps up around Memorial Day.

24 Yours will wrap up about that week?

25 So maybe the first week in June, which would be like

1 June --

2 THE COURT: The week of June 4?

3 MR. BARKET: Yes.

4 THE COURT: Okay.

5 MR. BARKET: Right in there. Could I just take a
6 look at my calendar?

7 THE COURT: Yes, of course.

8 And, also, is it realistic that your trial is going
9 to end by then, each one of you?

10 MR. BARKET: Mine is in state court, and I think it
11 should only take two weeks, so giving it three, almost four.

12 THE COURT: Okay.

13 MR. BARKET: My anniversary is the 25th.

14 THE COURT: So it better be done by then.

15 MR. BARKET: One would hope.

16 THE COURT: Understood.

17 MR. BARKET: It won't be the first time a trial
18 hadn't ended by then.

19 THE COURT: You want to get to your next anniversary.

20 So you think yours will end by then?

21 MS. COMEY: I assured Judge Briccetti it will, your
22 Honor.

23 THE COURT: Oh, you're in for it now. Okay.

24 THE DEPUTY CLERK: June 7th at 3.

25 THE COURT: If that works. Take a look at your

1 calendars.

2 MR. BARKET: Could we do the 7th a little bit earlier
3 than 3?

4 THE COURT: So we're on trial, unfortunately, that
5 week. We sit 9:30 to 2, so it's a little harder.

6 MR. BARKET: The 6th at 3?

7 THE COURT: We have a sentence on, unfortunately.

8 MR. BARKET: It's not the end of the world, but I'm
9 going to try one more time. The 5th?

10 THE DEPUTY CLERK: We could do 3:30.

11 MR. BARKET: That's fine. That's okay with me, I
12 should say.

13 THE COURT: Well, what if we did the 7th at 2:30?
14 Does that work?

15 MR. BARKET: Yes. That's fine.

16 THE COURT: Does that work, Ms. Comey?

17 MS. COMEY: Yes, your Honor. Thank you.

18 THE COURT: So we'll do the 7th at 2:30. And if I
19 can do the 5th, I'll let you know.

20 MR. BARKET: Okay.

21 THE COURT: Any objection to excluding time from now
22 until June 7?

23 MR. BARKET: No.

24 THE COURT: I take it that would be the government's
25 application.

1 MS. COMEY: Yes, your Honor.

2 THE COURT: All right. Then I'll prospectively
3 exclude time from today until June 7 of 2018 finding it's in
4 the interests of justice to do so. That finding is based on
5 the fact that there are a lot of things going on in this case.
6 There's an in-camera discovery review, a Brady review that
7 needs to be done and, among other things, the defense team is
8 feverishly preparing its next submission to the Justice
9 Department. So I, therefore, find that the interests of
10 justice from this exclusion outweigh Mr. Tartaglione's and the
11 public's interest in a speedy trial. That finding is made
12 pursuant to 18 U.S.C. Section 3161(h)(7)(A).

13 Anything else?

14 MS. COMEY: No, thank you, your Honor.

15 THE COURT: Anything else?

16 MR. BARKET: No, thank you, your Honor.

17 THE COURT: Ms. Comey, we'll be in touch with you
18 about transcription assistance, and then we'll do the review as
19 quickly as possible.

20 MR. BARKET: Thank you.

21 THE COURT: Enjoy the rest of your day.

22 Thank you, Marshals.

23 MS. COMEY: Thank you.

24 - - - -

25